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# The Americans with Disabilities Act and its Antecedents: Model Civil Rights Legislation and its Importance to Persons with Disabilities in the United States

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# Civil Rights Act of 1964

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First proposed by President John F. Kennedy in June of 1963 (assassinated in November 1963), Congress passed the Civil Rights Act of 1964 under President Lyndon Johnson. The Act prohibits discrimination on the basis of **race, color, religion, sex or national origin**. Provisions of this civil rights act forbade discrimination in:

- hiring, promoting, and firing (employment)
- public accommodations and federally funded programs
- strengthened the enforcement of voting rights and the desegregation of schools.

The Civil Rights Act of 1964 is the nation's benchmark civil rights legislation. Passage of the Act ended the application of “**separate but equal**” (“Jim Crow”) laws, which had been upheld by the Supreme Court in the 1896 case *Plessy v. Ferguson* racial segregation case.

While the Civil Rights Act did not specifically address disability, it laid the groundwork for a rights-based approach to combatting discrimination.



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# Architectural Barriers Act of 1968

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Congress passed the Architectural Barriers Act (ABA), the first federal law to address accessibility, to make federal facilities accessible to people with disabilities.

Unanimously approved on August 12, 1968, the law requires access to facilities designed, built, altered, or leased with **federal funds**.

By passing the ABA, Congress intended the federal government to set an example for state and local governments and for private industry. President Lyndon Johnson characterized barriers to access as a failure on the part of government that perpetuated “cruel discrimination.”





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# Additional Legislation

The **Education of All Handicapped Children Act** of 1974 mandated an end to separate and unequal educational opportunities by requiring that all children with disabilities be entitled to a free appropriate public education. Legislation was passed that contained a bill of rights for people with developmental disabilities aimed at promoting the **integration** of such individuals into the community.

**IDEA:** In 1990, the Individuals with Disabilities Education Act replaced the EHA in order to place more focus on the individual, as opposed to a condition that individual may have. The IDEA also had many improvements on the EHA, such as promoting research and technology development, details on transition programs for students post-high school and programs that educate children in their neighborhood schools, as opposed to separate schools.

The **Fair Housing Act** of 1968 was amended in 1988 to add protection for people with disabilities in this critical area.

**Air Carrier Access Act** of 1986 prohibits discrimination on the basis of disability in air travel. Enforced by the Department of Transportation. This rule applies to all flights of U.S. airlines, and to flights to or from the United States by foreign airlines. Does not require the disabled passenger to give advance notice on flights with more than 60 seats. Requires the airline to transport oxygen and batteries.

**Voting Rights Act** of 1965 and other, later voting rights legislation.



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# Rehabilitation Act of 1973

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- The Rehabilitation Act of 1973 is a federal law that replaces preexisting law to extend vocational rehabilitation services, with special emphasis on services to those with the most severe disabilities, to expand research and training programs with respect to individuals with disabilities, and to establish special responsibilities in the Department of Health, Education, and Welfare (HEW) for coordination of all programs with respect to individuals with disabilities.
- The Rehabilitation Act requires affirmative action in employment by the federal government and by government contractors and prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.
- President Richard Nixon signed the Act into law on September 26, 1973, after having vetoed two previous versions.



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## Section 504

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The text of Section 504 of the Rehabilitation Act of 1973 states: “No otherwise qualified handicapped individual in the United States shall solely on the basis of his handicap, be excluded from the participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” This means no person should be excluded from any program, service, or similar **which receives federal funds**.

From the passage of the Rehabilitation Act in 1973 until 1977 there were no published regulations for Section 504. In April 1977, activists began to demonstrate and sit-in at the Health, Education and Welfare offices around the country, occupying the buildings for 26 days. It was signed on April 28, 1977.

Section 504 later served as a model for many of the ADA's provisions.



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## The 504 Sit-In



Section 504 couldn't be implemented until the U.S. secretary of health, education and welfare (HEW), Joseph Califano, issued regulations for its enforcement. As legislators called for studies of the impact of implementing Section 504 and proposed rewriting the regulations to make them less comprehensive, inaction dragged on for more than three years, and activists took extreme measures. After occupying the federal building in San Francisco for 28 days, on April 28, 1977, Califano finally issued the Section 504 regulations without any changes — a victory for the protesters that ended the longest peaceful occupation of a federal building in U.S. history.





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## Americans with Disabilities Act (ADA) of 1990

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The ADA is a **comprehensive civil rights law**. It prohibits discrimination on the basis of disability in employment, state and local government programs, public accommodations, commercial facilities, transportation, and telecommunications. It is intended to protect against discrimination based on disability, defined as:

*a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a **record** of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are **regarded** as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability. (see ADAA)*

The ADA covers employment, education, transportation, housing, public accommodation.



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# Impact

When President Bush signed the Americans with Disabilities Act into law — **the world's first comprehensive civil rights law for people with disabilities** — in front of 3,000 people on the White House lawn on July 26, 1990, the event represented an historical benchmark and a milestone in America's commitment to full and equal opportunity for all of its citizens.

The President's emphatic directive on that day — "Let the shameful walls of exclusion finally come tumbling down" — neatly encapsulated the simple yet long overdue message of the ADA: that millions of Americans with disabilities are full-fledged citizens and as such are entitled to legal protections that ensure them equal opportunity and access to the mainstream of American life.



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# The Capitol Crawl





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# ADA Title I

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## Title I – Employment

- The ADA states that an employer shall not discriminate against "a qualified individual with a disability". This applies to job application procedures, hiring, promotion, and firing. There are strict limitations on when an employer can ask job applicants or employees disability-related questions or require them to undergo medical examination, and all medical information must be kept confidential.
- Employers are also required to provide reasonable accommodations to job applicants and employees with disabilities.
- Enforced by the EEOC (Equal Employment Opportunity Commission)



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# ADA Title II

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## Title II – Public Entities (and **public universities**):

- Covers all activities of state and local governments. Title II requires that state and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities. Examples of these include public education, employment, transportation, recreation, health care, social services, courts, **voting** and town meetings.
- Public entities are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, until doing so would fundamentally alter the nature of the service, program or activity provided.
- Title II also covers public transportation services, such as city buses and public rail transit (e.g., subways, commuter rails, Amtrak).
- Title II also applies to all state and local public housing and housing assistance programs for the poor. The Office of Fair Housing and Equal Opportunity is charged with enforcing this provision.
- The Department of Justice (DOJ) is responsible for most Title II enforcement.



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# ADA Title III

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Title III – Public Accommodations (private businesses):

- Under Title III, no individual may be discriminated against on the basis of disability with regards to the **full and equal enjoyment of the goods, services, facilities, or accommodations** of any place of public accommodation by any person or private entity who owns, leases, leases to, or operates a place of public accommodation, such as:
- restaurants, retail stores, hotels, movie theaters, private schools and **universities**, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, recreation facilities including sports stadiums and fitness clubs.
- The Department of Justice (DOJ) is responsible for most Title III enforcement.



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# ADA Title IV

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## Title IV – Telecommunications:

- Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week. TRS enables callers with hearing and speech disabilities who use TTYs (also known as TDDs), and callers who use voice telephones to communicate with each other through a third-party communications assistant.
- The Federal Communications Commission (FCC) has set minimum standards for TRS services. Title IV also requires closed captioning of Federally funded public service announcements.



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# ADA Title V

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## Title V – Miscellaneous Provisions:

- Applies to all other titles (“cross-cutting measures”). includes miscellaneous provisions, requiring the **U.S. Access Board** to issue accessibility standards, requiring federal agencies to provide technical assistance and provides that state and local laws that mandate equal or greater protection to individuals with disabilities are not superseded or limited by the ADA or section 504 of the Rehab Act.
- Prohibition against retaliation, interference, coercion, or intimidation: The retaliation clause prohibits discrimination against an individual because the individual has opposed something unlawful under the ADA or has been involved in some type of complaint activity. The interference clause makes certain employer behaviors unlawful under the ADA. These behaviors include the following: coercion, intimidation, threatening behavior, interference with an individual exercising one of his or her rights under the ADA, or for aiding or encouraging someone else to enjoy these same rights.





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# ADAA (ADA Amendments Act) 2008

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The ADAAA overturns a series of Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that an impairment is a "disability."

The ADAAA made significant changes to the ADA's definition of "disability" that broadens the scope of coverage under both the ADA and Section 503 of the Rehabilitation Act.

- Expanding the definition of "major life activities";
- Redefining who is "regarded as" having a disability;
- Modifying the regulatory definition of "substantially limits";
- Specifying that "disability" includes any impairment that is episodic or in remission if it would substantially limit a major life activity when active; and
- Prohibiting consideration of the ameliorative effects of "mitigating measures" when assessing whether an impairment substantially limits a person's major life activities.



# ADA Glossary

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**Readily achievable** – Easily accomplished and able to be carried out without much difficulty or expense. Public accommodations are required to remove barriers when it is readily achievable to do so.

**Reasonable accommodation** – A modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity.

**Reasonable modification** – A public entity must modify its policies, practice, or procedures to avoid discrimination unless the modification would fundamentally alter the nature of its service, program, or activity.



# ADA Glossary

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**Undue burden** – Significant difficulty or expense. A public accommodation is not required to provide any auxiliary aid or service that would result in an undue burden.

**Undue hardship** – An action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. The concept of undue hardship includes any action that is unduly costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the business. Accordingly, whether a particular accommodation will impose an undue hardship must always be determined on a case-by- case basis.

**Undue financial and administrative burden** – A public entity does not have to take any action that it can demonstrate would result in an undue financial and administrative burden. This applies in program accessibility, effective communication, and auxiliary aids and services. The determination of an undue financial and administrative burden must be:

1. Made by the head of the public entity or his/her designee.
2. Accompanied by a written statement of the reasons.
3. Based on all resources available for use in the program.



# ADAA Highlights (Lodging)

The 2010 ADA Standards for Accessible Design include revised minimum requirements for newly and constructed or altered facilities so that they are accessible to and usable by individuals with disabilities. Minimum requirements:

- Accessible guest rooms with mobility and communication features dispersed among the **different categories** or classes of guest rooms available in the facility.
- Amenities such as **swimming pools** and spas, exercise facilities, saunas and steam rooms, golf and miniature golf courses, boating and fishing facilities, and playgrounds for children must be accessible and usable by people with disabilities.



# ADAA Highlights (Lodging cont.)

## Reservation Systems Requirements for Places of Lodging

- Places of lodging must identify and **describe the accessible features** of the property and the accessible guest rooms in enough detail to enable an individual to decide if the facility will meet his or her needs. Information, including photos or other images, may be posted on websites or included in brochures or other materials.
- People with disabilities must be able to **make reservations** for accessible guest rooms during the same hours and **in the same ways** that other people are able to make reservations such as by telephone, in person, email, via websites, or through third parties (travel agents or online reservations services).
- When a reservation is made for an accessible guest room, the specific accessible guest room reserved **must be held** for the reserving customer and the room must be removed from the reservation system.



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# ADAAG

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- On the first anniversary of the ADA in 1991, the Access Board published the [ADA Accessibility Guidelines \(ADAAG\)](#) that contain detailed design requirements for buildings and facilities in new construction and alterations. The **Department of Justice** adopted ADAAG as the basis of its enforceable standards, which made compliance with the requirements mandatory under the ADA.
- Also included were ADA guidelines for transportation vehicles and facilities. These guidelines address access to different modes of public transportation, including buses, vans, rail vehicles, automated guideway systems, and trams. The **Department of Transportation** adopted the guidelines as its enforceable ADA standards for transportation systems.
- In 1998, the Board supplemented ADAAG to provide greater coverage of **state and local government facilities**, including courthouses and prisons, and to address access to children's environments. It followed up several years later with new guidelines for various types of recreation facilities, including play areas, swimming pools, amusement rides, golf courses, boating and fishing facilities, and sporting facilities, among others.



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# Using the ADA checklist

<https://adachecklist.org/checklist.html>



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# Accessibility at IU

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<https://accessibility.iu.edu/>

According to the Offices for Civil Rights (OCR) for both the DOJ and the DOE:

"Accessible" means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and **independently** as a person without a disability.

<https://map.iu.edu/iub/index.html>





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# Disability Services for Students (DSS) at IU

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## Eligibility

- Eligibility to receive support services through DSS is determined on an **individual** basis. Submitted documentation is reviewed in addition to the **interactive process** with the student to establish equitable access and reasonable accommodations.
- A student may have readily apparent or obvious impairment and/or documentation which demonstrates that your disorder or impairment is covered under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. ADAAA defines a disability as a physical or mental impairment that substantially limits one or more major life functions.
- Your documentation should not only establish the presence of a substantially functional limitation, but also must describe its current academic impact. Diagnosis of a condition, in and of itself, does not automatically confer disability status.



# ADA vs. UNCRPD

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- The U.S. disability rights agenda, premised on a social model of disability, has exerted a powerful international influence in revising legal regimes affecting disabled persons. But the U.S. scheme, which is primarily an **antidiscrimination** one, has limits. Specifically, it has proven difficult to transform American society's institutional structures and attitudes towards marginalized individuals. Further complicating the U.S. disability antidiscrimination project have been narrow judicial interpretations on definition of disability issues, as well as uneven implementation of existing federal law.
- Ratifying the UN Convention on the Rights of Persons with Disabilities would strengthen the civil rights protections that are already available to people with disabilities in the US. It would send the clear, unequivocal message that as a nation, we are fully committed to ensuring that people with disabilities live full and rich lives as citizens in their communities, participating in everything society offers. The ADA has not made full inclusion a reality for many Americans with disabilities. The baton should be passed to the UN Convention, which was built on the framework of the ADA, but goes further. The Convention will require the federal government to **assertively promote disability rights**, a step that is vitally important today.







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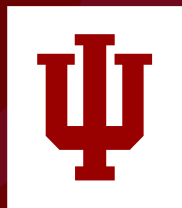
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## Our Commitment to Accessibility

The National Park Service is committed to ensuring that people with disabilities have equal opportunity to benefit from our facilities,



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